**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>-against-<br><br>WESTERN ELECTRIC COMPANY, INC., and AMERICAN TELEPHONE AND TELEGRAPH COMPANY,<br><br>Defendants. | Civ. Act. No. 82-0192 (HHG) |

## APPLICATION FOR EAS WAIVER

Bell Atlantic-West Virginia requests that the Department move the Court for an order permitting Bell Atlantic to provide extended area service between its Mason, West Virginia, exchange and the exchanges serving Pomeroy and Middleport, Ohio. The Mason exchange is in the Charleston LATA, and the Ohio towns are in the Columbus LATA.

The West Virginia Public Service Commission has found that there is a "substantial and significant community of interest" among the people in these towns along the Ohio River.[1] This conclusion was based upon a substantial record and was reached after public hearings in the affected communities. The relevant facts are detailed by the

---

[1] *Town of Mason v. C&P Tel. Co.*, Case No. 92-1188-T-C, Order at 25 (W. Va. P.S.C. Jan. 2, 1995).

PSC in five pages of discussion and findings of fact in the attached order. The Commission found that these towns are in reality "one large consolidated community" in which as many as half the people live in one state and work in the other.[2] Residents testified that they made interLATA calls of five miles or less several times each day to reach jobs, families, schools and friends.

The fact that these calling patterns resulted in large numbers of interLATA toll calls was found to have a particularly adverse effect on schools, health care institutions and other public service agencies. The Commission concluded that "all of the schools must accommodate high telephone bills in their budgets due to the lack of local calling between the four communities."[3] Similarly, hospitals and other medical facilities "experience high long distance calling expenses, due to the current configuration of the existing LATA boundary, even though most of the residents of the area and their patients live within a ten mile radius of each other."[4] Fire departments likewise "experience frequent long distance calling expense."[5]

The Court has granted similar relief for West Virginia reside[illegible]e past, including approval of an extended area serving arrangement between Bell Atlantic's Keyser exchange and GTE's Burlington and Port Ashby exchanges that is comparable to the relief requested here.[6]

---

[2] *Id.* at 21.

[3] *Id.*

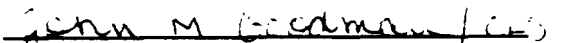
[4] *Id.* at 22.

[5] *Id.*

[6] *United States v. Western Elec. Co.*, Civ. No. 82-0192 (HHG), Order (D.D.C. Sept. 26, 1990). *But see United States v. GTE Corp.*, Civ. Act. No. 83-1298 (HHG), Memorandum and Order (D.D.C. Dec. 17, 1993)(denying GTE request for

For these reasons and those set out in the PSC's order, Bell Atlantic respectfully requests that the Department ask the Court to sign the attached proposed order.

Respectfully submitted,



John M. Goodman (Bar No. 383147)

Attorney for Bell Atlantic-West Virginia

1133 20th Street, N.W.
Washington, D.C. 20036
(202) 392-1497

Of counsel
David B. Frost

December 4, 1995

---

approval of West Virginia EAS arrangement apparently because of lack of sufficient community of interest showing).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

-against-

WESTERN ELECTRIC COMPANY, INC., and AMERICAN TELEPHONE AND TELEGRAPH COMPANY,

Defendants.

Civ. Act. No. 82-0192 (HHG)

ORDER

Upon the motion ofthe United States, dated _____, 1995, and the entire record herein, it is hereby

ORDERED that Bell Atlantic may provide extended area service between its Mason exchange and the exchanges serving Pomeroy and Middleport, Ohio

Harold H. Greene
United States District Judge

Dated:

**PUBLIC SERVICE COMMISSION**
**OF WEST VIRGINIA**
**CHARLESTON**

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-Wit:

I, HOWARD M. CUNNINGHAM, Executive Secretary of the Public Service Commission of West Virginia, certify that the attached is a true and complete copy of an order entered by the Commission on December 13, 1994, in Case No. 92-1188-T-C, entitled Town of Mason v. The Chesapeake and Potomac Telephone Company of West Virginia, and Contel of West Virginia, Inc., as the same appears on file and of record in my ffice.

Given under my hand and the seal of The Public Service Commission of West Virginia, in the City of Charleston, West Virginia, this 8th day of November 1995.

Howard M. Cunningham
Executive Secretary

92-1188

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
1-2-95

Entered: December 13, 1994

CASE NO. 92-1188-T-C

TOWN OF MASON, a municipal corporation;
and numerous residents thereof,

Complainants,

v.

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY
OF WEST VIRGINIA, a corporation; and CONTEL
OF WEST VIRGINIA, INC., dba GTE WEST VIRGINIA,

Defendants.

CASE NO. 93-0223-T-C

.ILE E. CHANEY, doing business as CHANEY
INSURANCE AGENCY, et al.

Complainants,

v.

GTE SOUTH, INCORPORATED,
a public utility,

Defendants.

## RECOMMENDED DECISION

## PROCEDURE

CASE NO. 92-1188-T-C

On December 3, 1992, the Town of Mason (Town or Mason), a municipal corporation, Mason County, and numerous residents of the Town of Mason, filed a duly verified formal complaint against The Chesapeake and Potomac Telephone Company of West Virginia (C&P) and Contel of West Virginia, Inc., dba GTE of West Virginia (GTE West Virginia), both public utilities roviding telephone service. As set forth in the complaint, the Town of Mason and the various residents of the Town were requesting that C&P and GTE West Virginia take measures to reconfigure their local exchanges to eliminate long distance charges between the 773 and 882 exchanges in West Virginia, which correspond to the Town of Mason and the bend area of

Mason County, and the 922 exchange in Ohio, which corresponds to the Middleport-Pomeroy area of Ohio. This complaint case was designated as Case No. 92-1188-T-C.

On December 14, 1992, GTE West Virginia filed its answer to the complaint and a motion to dismiss that complaint. According to the answer and motion, since the requested relief would require the configuration of interstate toll calls, GTE West Virginia observed that the Commission was without jurisdiction to grant the relief requested by the Town and the residents of the Town. GTE West Virginia also observed that the requested provision of interexchange toll free calling would effectively require GTE West Virginia to violate the provisions of a consent decree entered before the United States District Court for the District of Columbia in United States v. GTE Corporation, Docket No. 83-1298, which prohibited Contel from engaging in interexchange telecommunications. In order to provide the service requested by the Town of Mason, Contel would have to successfully petition the appropriate courts for a waiver of the consent decree to be able to provide interexchange telephone service between Mason, West Virginia, and the Middleport-Pomeroy area of Ohio.

Also, on December 14, 1992, C&P filed a response to the formal complaint, similarly indicating that it was prohibited from providing the interstate telecommunication service requested by the complaint and noting that the Commission was without jurisdiction to grant the requested relief.

By order entered on January 7, 1993, the Commission referred Case No. 92-1188-T-C to the Division of Administrative Law Judges for processing and mandated that a recommended decision be rendered on or before July 1, 1993.

By order entered on February 3, 1993, Administrative Law Judge Robert F. Williams deferred ruling upon the motions filed by C&P and GTE West Virginia to dismiss the complaint for lack of jurisdiction, until Commission Staff submitted its recommendation in the proceeding. In the event that the ALJ ultimately determined that the Commission lacked the requisite jurisdiction and authority to grant the requested relief, the ALJ indicated that the case would be dismissed by further order. However, the ALJ tentatively scheduled the matter for hearing to be conducted on April 15, 1993, in Point Pleasant, West Virginia.

On April 2, 1993, Commission Staff filed a Final Joint Staff Memorandum in this case. In its recommendation, Commission Staff recommended that the complaint in Case No. 92-1188-T-C be dismissed, without prejudice. In its Memorandum, Commission Staff observed that GTE South had earlier agreed to seek a waiver from the United States District Court which would allow for local calling for GTE South's Paw Paw exchange and C&P's Berkeley Springs exchange [as a result of the Recommended Decision entered in Case No. 92-0576-T-C]. The United States Department of Justice had filed a document in opposition to GTE South's requested waiver on March 29, 1993. Since the relief sought in the Town of Mason's complaint would be, in many ways, more extraordinary than the relief sought by GTE South concerning the Paw Paw exchange and the Berkeley

Springs exchange, Commission Staff recommended that any action on the Town of Mason's case be deferred until those concerns have been resolved in the appropriate courts.

On April 7, 1993, Judge Williams entered a Recommended Decision in Case No. 92-1188-T-C, dismissing the proceeding for lack of Commission jurisdiction to grant the requested relief. As noted by Judge Williams, the complaint filed by the Town of Mason was clearly seeking the Commission's assistance to make interstate calls between the 922 exchange in Ohio and the 773 and 882 exchanges in West Virginia as local calls, as opposed to interstate toll calls. Judge Williams noted that the Commission lacks any authority to regulate interstate calling, which is the exclusive domain of the Federal Communications Commission (FCC). Since the Commission lacked authority to regulate interstate calling, Judge Williams was of the opinion that the Commission would lack any conceivable authority to require a common carrier within its jurisdiction to seek any interstate calling plans or a waiver of any restrictions on its interstate operating authority. Therefore, Judge Williams granted the motions of C&P and GTE West Virginia to dismiss the Town of Mason's complaint without prejudice, for lack of Commission jurisdiction. By Procedural Order entered on that same date, Judge Williams also cancelled the hearing tentatively scheduled for April 15, 1993. Judge Williams' Recommended Decision in Case No. 92-1188-T-C became a final order of the Public Service Commission, without exceptions having been filed in response thereto, on April 27, 1993.

On April 30, 1993, Commission Staff filed a petition for reconsideration of Judge Williams' final order in Case No. 92-1188-T-C. According to the petition for reconsideration, shortly after the period for filing exceptions to Judge Williams' Recommended Decision had expired, Commission Staff learned from Staff members of the Public Utilities Commission of Ohio (PUCO) that a solution to the problems raised by the Town of Mason could still be possible. Commission Staff had learned that the PUCO planned to initiate a proceeding on that issue in the very near future; however, PUCO Staff members indicated that such a proceeding could take up to five or six months. According to the petition for reconsideration, in light of the planned activity by the Public Utilities Commission of Ohio, Commission Staff felt that it would be in the best interest for the Commission to reconsider the recommended decision which became final on April 27, 1993, and Commission Staff urged the Commission to reverse that part of the April 7, 1993 Recommended Decision which concluded that the Commission had no jurisdiction over the matters raised in the Town's complaint. While the petition for reconsideration noted that the Public Service Commission of West Virginia, acting alone, had no authority to direct the involved local exchange carriers to seek waivers that would allow for the provision of interstate service, a joint effort on the part of the Public Service Commission of West Virginia and the Public Utilities Commission of Ohio could properly direct that such actions be taken. Commission Staff recommended that, once the Commission reconsider the jurisdictional issue, the instant complaint be returned to the Commission's open docket pending further recommendations from Staff regarding steps to be taken and the time necessary to complete those procedures.

On July 8, 1993, the Commission issued an order granting Commission Staff's petition for reopening. The Commission required Commission Staff to file, within thirty (30) days of the date of the Commission's order, a memorandum outlining how Commission Staff intended to proceed toward achieving a solution for the case at bar. However, the Commission's order did not specifically address the jurisdictional issues raised by Commission Staff in its petition for reconsideration. Rather, the Commission's order simply reopened Case No. 92-1188-T-C and directed Commission Staff to file the appropriate memorandum.

CASE NO. 93-0223-T-C

On March 18, 1993, Nile C. Chaney, doing business as Chaney Insurance Agency, and approximately 357 other residents of the Fort Ashby area, Mineral County, filed a formal complaint, duly verified, against GTE South, Incorporated (GTE South). The Fort Ashby residents and businesses complained of being unable to call locally between the Cumberland, Maryland, area and all areas in between, although Cumberland was less than eight air miles from Fort Ashby. The complaint asserted that this lack of local communication to the economic, educational and emergency center for the Fort Ashby area has been detrimental to residents and businesses and has been a hindrance to economic growth. The residents also complain of being unable to call the Frankfort High School and the new Frankfort Middle School as local calls, although those schools are approximately two air miles from Fort Ashby. The Complainants requested that they be permitted to call the Cumberland, Maryland exchanges locally, especially exchanges 722, 724, 777, 759 and 729. The Complainants also indicated that priority should be given to allowing them to call the West Virginia areas with the telephone prefixes 726 and 738 as local calls. Mr. Chaney's complaint was designated as Case No. 93-0223-T-C.

By order entered on March 19, 1993, GTE South was directed to satisfy the complaint or make answer thereto, in writing, within ten days of the service upon it be certified mail of a copy of the complaint and a copy of the Commission's order. The order further stated that, after receipt of the answer or default in the filing thereof, the Commission would proceed to investigate the matters set forth in the complaint in such manner and by such means as may be deemed proper.

On March 22, 1993, the Mineral County Development Authority filed a letter in support of the Fort Ashby residents' complaint against GTE South.

On April 2, 1993, GTE South filed its answer to the complaint. As set forth in the answer, the Complainants are seeking a local calling plan that would permit Fort Ashby residents to call the Cumberland, Maryland (722, 724, 777, 759 and 729 prefixes), as well as Ridgeley, West Virginia (726 and 738 prefixes). GTE South requested that the Commission dismiss the complaint. According to the answer, the Complainants are requesting that GTE South provide them with local calling to West Virginia and Maryland exchanges which are served by C&P. Calls from Fort Ashby to those non-GTE South exchanges are interLATA in nature and, in the case

of the Cumberland exchange, are interstate, as well as interLATA. GTE South is subject to a Federal consent decree forbidding it to engage in interexchange telecommunications, entered in United States v. GTE Corporation, Docket No. 83-1298 (D.D.C.). The requested relief would cause GTE South to violate Federal law. According to the answer, the Commission is without jurisdiction to grant the remedy sought in the complaint.

The answer also noted that GTE South is aware of Fort Ashby's long-standing interest in expanded local calling to Ridgeley and Cumberland. To that end, in September of 1992, GTE South petitioned the United States District Court for the District of Columbia, which administers the consent decree, to permit interLATA expanded local calling between Fort Ashby and Ridgeley, West Virginia. The Court denied the request on November 6, 1992, after the United States Department of Justice was unable to conclude that there was sufficient need for further expansion of the Fort Ashby calling scope to include the Ridgeley exchange.

The answer asserted that the instant complaint encompassed an area much larger than that involved in the previous Fort Ashby-Ridgeley waiver request. Since the Court found insufficient justification to permit interLATA calling even to one additional West Virginia exchange, GTE South believes that it is unlikely that the Court would grant a waiver for a further expansion to multiple exchanges in both West Virginia and Maryland without extraordinarily strong justification. The Fort Ashby customers and other interested parties, with the Commission's endorsement, would need to demonstrate such a justification before GTE South could again petition the Court for a waiver.

In view of the jurisdictional problems associated with the complaint, and the Complainants failure to state a violation on GTE South's part of any West Virginia law, any rules, regulations or orders of the Commission, or any of the Company's tariffs or service rules, GTE South requested that the Commission dismiss the complaint with prejudice.

On April 5, 1993, the Mineral County Commission filed a letter in support of the Fort Ashby residents' complaint.

On May 17, 1993, Staff Attorney Steven Hamula filed the Initial Joint Staff Memorandum in this proceeding. While Commission Staff agreed with GTE South's general assessment concerning the difficulties associated with securing a waiver from the United States District Court, Commission Staff was not prepared to concede that the matter should simply be dismissed and the Staff Attorney noted that other cases involving requests for a similar course of action were still on-going. Commission Staff acknowledged that it appeared to be more difficult at this time to secure waivers from the United States District Court, because the United States Department of Justice has become increasingly more opposed to the granting of waiver requests. Commission Staff recommended that the case be held in abeyance pending the completion of on-going Staff activities regarding the jurisdictional problems posed by the interstate aspect of this complaint, as well as with efforts to alleviate the difficulties which have arisen as a result of the U.S. Department of Justice's opposition to the expansion of interLATA local calling. Commission Staff

recommended that the Commission retain the case pending the receipt of additional Staff recommendations.

CONSOLIDATION OF CASES

On August 9, 1993, Staff Attorney Steven Hamula filed what was titled a "Responsive Joint Staff Memorandum" in these cases, as well as Case No. 92-0576-T-C, a similar proceeding. Attached to Mr. Hamula's Memorandum were two exhibits which explained the Staff plan which was required to be filed by the Commission's order of July 8, 1993, in Case No. 92-1188-T-C. According to the Staff Memorandum, the United States Department of Justice apparently is of the opinion and belief that LATA waivers should not be granted for optional extended area service. Apparently the United States Department of Justice feels that GTE South's Local Calling Plan and C&P's Winfield Plan are optional EAS plans. While Staff disagrees with the Department of Justice's assessment, there appears to be little hope of convincing the Department of Justice that it is in error. Accordingly, Commission Staff has decided to try a different approach in a renewed effort to procure the expansion of the local calling areas for the Mason/New Haven, Fort Ashby and Paw Paw areas. Commission Staff suggested the addition of a flat-rate non-optional EAS, so that the desired interLATA local area calling would be provided.

Attachment A to the Staff Memorandum shows the present local calling options for C&P's Berkeley Springs exchange. Attachment B illustrates the Staff proposal. Commission Staff simply added flat rate calling from Berkeley Springs to GTE South's Paw Paw exchange for each of the Berkeley Springs options. The same procedure would simultaneously be done for GTE South's Paw Paw exchange. Since the Staff proposal puts into place traditional, non-optional flat rate EAS between the Paw Paw and Berkeley Springs exchanges, Commission Staff believes that the United States Department of Justice would be hard pressed to oppose it on the grounds that it is non-optional. Commission Staff also believes that similar proposals could be implemented in the Mason-New Haven and Fort Ashby/Ridgeley/Cumberland calling areas as well. Commission Staff recommended that Case Nos. 92-1188-T-C and 93-0223-T-C be referred to the Division of Administrative Law Judges and set for hearing in the affected communities for the purpose of gathering evidence on which to authorize the implementation of Staff's proposal. Staff also recommended that Case No. 92-0576-T-C be reopened and revisited for a similar purpose.

On August 14, 1993, C&P filed a response to the Responsive Joint Staff Memorandum. Initially, C&P noted that it had absolutely no data to support an argument that the service that has been requested should be provided. More importantly, C&P believes that the Staff plan is ill-advised and totally inconsistent with the local service repricing plan authorized in Case No. 90-613-T-C, et al., and subsequently adopted by nearly all of the other local exchange carriers in West Virginia. To offer a flat-rate EAS service, as a part of the thrifty caller plan or community caller plan, to selected exchanges would be clearly discriminatory to other thrifty caller and community caller customers who would like to have an exchange added for a fee of $0.50, and made a part of their flat-rate calling area. The local service pricing plan would fall

apart if this fragmentation was allowed to commence. According to C&P, any plan by the Public Service Commission of West Virginia, the Ohio Public Utilities Commission or the customers in the affected areas to make such service available should insure that it does not disturb the principles involved in C&P's local service repricing plan and provide C&P with sufficient revenues to cover the cost to C&P for providing the service. C&P also cited its support for the Recommended Decision previously issued in Case No. 92-1188-T-C.

On August 17, 1993, GTE South filed its response to the Responsive Joint Staff Memorandum. GTE South also asserted that the Staff plan totally undermined the local calling plan concept. According to GTE South, to propose that an Option 1 customer could call an exchange miles away at no charge, while having to pay usage charges for a call to a next-door neighbor is illogical. Further, the proposed charge of $0.50 per month is based on no known study and establishes a new rate structure for LCP which deviates from a long-standing objective of statewide uniform rates for the various LCP options. GTE South also asserted that the proposal discriminates against those customers who subscribe to Options 1 and 2 for the obvious reason, to choose a low-cost plan which best suits their calling habits. GTE South noted that C&P and GTE South, as well as other LECs, have implemented a statewide calling plan with fundamental concepts applicable to all companies and all customers. This has been adhered to, with over 85% of West Virginia's telephone customers currently assigned to a Winfield or LCP-type plan. To deviate from the basic concept would cause customer confusion across the state. Both GTE South and C&P implemented the Winfield Plan based on clearly defined parameters, which resulted in the uniform statewide plan that the customers enjoy and understand.

GTE South also stated that it had a problem complying with Staff's proposal from a technical standpoint. GTE South's LCP customer options are identified by the billing system rather than the switch data base. GTE South would have to make major modifications to its billing system to accommodate deviations from the basic options which currently reside in the billing codes. GTE South is uncertain if the modifications are possible under the current LCP billing format.

GTE South also objected to Staff's proposal that a hearing be conducted in the affected communities. According to GTE South, it has already been clearly displayed that the communities, as well as GTE South, strongly support the expansion of local calling areas across the LATA boundaries in question. GTE South has never voiced objection to that expansion and has taken the initiative to file several requests, clarifying documents and affidavits with the United States Department of Justice in an attempt to gain approval for calling scope expansion. GTE South encouraged the Commission to reject the Staff proposal and consider other, more reasonable alternatives. According to GTE South, the Staff proposal provides no basis for any further proceedings before the Commission in any of the three cases, since such proceedings would only waste Commission and Company time and resources, since it is virtually certain that the United States District Court would ultimately reject the Staff plan. GTE South recommended that Commission Staff pursue discussions with the Department of Justice if it continues to believe its proposal

has merit. According to GTE South, if it files another waiver request based on a proposal that fails to satisfy the concerns of the Department of Justice and the United States District Court about measured EAS, it will only harm GTE South's credibility and the Commission's credibility before the Court.

On November 23, 1993, the Public Service Commission issued an order referring all three proceedings to the Division of Administrative Law Judges for a hearing on the merits of the Staff proposal, with a recommended decision to be entered on or before June 6, 1994.

On February 1, 1994, the undersigned Administrative Law Judge issued a Procedural Order in this matter, scheduling these proceedings for hearing to be held in the Commission's Hearing Room, Public Service Commission Building, 201 Brooks Street, Charleston, West Virginia, on March 21, 1994, at 9:30 a.m., and to continue on each successive weekday thereafter until concluded. Additionally, the ALJ directed the filing of prepared direct and rebuttal testimony. The purpose of the hearing, as stated in the February 1, 1994 Procedural Order, was to hear testimony on the merits of the Staff proposal regarding a flat-rate non-optional Extended Area Service for the calling areas which are the subject of the three cases which are the subject of this proceeding. The hearing was scheduled specifically in response to the Commission's Order of November 23, 1993, reopening all three proceedings and referring them to the Division of Administrative Law Judges for a hearing on the merits of the Staff proposal, with a recommended decision to be entered on or before June 6, 1994.

The February 1, 1994 Order noted that it would not be efficient or reasonable at this time to attempt to generate a record to support community of interest arguments for the three calling areas covered by these consolidated complaints. Rather, the ALJ determined that administrative efficiency dictated that arguments over a basic plan to be presented to the United States Department of Justice and the United States District Court for the District of Columbia be addressed first. If a suitable accommodation between the defendant telephone companies and Commission Staff could be reached over an appropriate plan to be presented to those two federal bodies, it would then be appropriate for the Commission to either reopen these proceedings for further hearings in the affected communities, or for Commission Staff to petition the Commission for the institution of a general investigation for the purpose of obtaining evidence on the communities of interest for the affected telephone exchanges.

On February 14, 1994, Nile E. Chaney, doing business as Chaney Insurance Agency, one of the named Complainants in the complaint proceedings which are the subject of these consolidated cases, filed a letter with the Commission requesting a continuance of the hearing set for March 21, 1994, due to a prior commitment in Florida from March 16 until March 30, 1994.

On February 15, 1994, the two defendant telephone companies filed motions with the Public Service Commission to dismiss the three proceedings for lack of subject matter jurisdiction by the Public Service

Commission. The motions argued that the Commission lacks jurisdiction to order the interstate Extended Area Service requested by the Complainants in these proceedings. Further, the requested Extended Area Service would also cross LATA boundaries, and such interLATA EAS cannot be provided by the Companies without the approval of the United States District Court for the District of Columbia. Accordingly, the Commission lacks the requisite authority to grant the requested relief. The Companies also indicated that prolonging these proceedings, as they are presently constituted, would foster false hopes in most or all of the Complainants.

By Procedural Order issued on February 16, 1994, the Administrative Law Judge provisionally denied the two motions to dismiss filed by the Defendant telephone companies. As noted by the ALJ, the Commission had never squarely addressed the issue of its jurisdiction in these cases and the ALJ acknowledged that the jurisdictional issue could be quite problematic. However, the ALJ noted that the Division of Administrative Law Judges had been ordered to hold a hearing on these matters, and, therefore, a hearing would be held.

With respect to the request of Mr. Chaney, for a continuance and rescheduling of the March 21, 1994 hearing, the ALJ determined that such was inappropriate and unnecessary at this time, since the issue of community of interest for the local calling areas which are the subject of these proceedings would not be addressed at the March 21, 1994 hearing. Rather, the March 21, 1994 hearing was being held solely to address the merits of the Staff plan regarding flat-rate non-optional EAS for the local calling areas at issue in these cases and to receive the testimony and objections of the Defendant telephone companies in response thereto. The order noted that, if it is subsequently determined that the Staff plan is reasonable, or if an accommodation on an appropriate plan is reached between Commission Staff and the telephone companies, it is likely that hearings would be held in the appropriate areas to establish a record and receive evidence on the appropriate communities of interest for the subject local calling areas.

The hearing set for March 21, 1994, was held as scheduled, with Joseph J. Starsick, Jr., Esquire, appearing on behalf of Bell Atlantic-West Virginia, Inc. (Bell Atlantic or BA-WV)[1]; John Philip Melick, Esquire, appearing on behalf of Citizens Utilities Company, doing business as Citizens Telecommunications Company of West Virginia, Inc. (Citizens)[2]; Nile E. Chaney, Complainant, appearing pro se; and Steven Hamula, Esquire, of the Commission's Legal Division, appearing on behalf

---

[1]By Commission Order entered on January 25, 1994, the Public Service Commission approved a revised tariff filed by the Chesapeake and Potomac Telephone Company of West Virginia (C&P) changing its corporate name to Bell Atlantic-West Virginia, Inc.

[2]Citizens is the successor company to GTE South, Incorporated (GTE South), and Contel of West Virginia, doing business as GTE West Virginia (Contel). By Commission Order entered on November 29, 1993, the Public

(Footnote Continued)

of Commission Staff. At the hearing, Commission Staff, BA-WV and Citizens each presented the testimony of one witness and each introduced two exhibits into evidence, while Mr. Chaney presented testimony on his behalf. At the conclusion of hearing, the parties requested that the Administrative Law Judge delay establishing a briefing schedule for the issues regarding the Staff-proposed EAS plan and the telephone companies' objections thereto, until a decision is reached on the outstanding motions to dismiss. The parties recommended that, if the motions to dismiss are ultimately denied, the order denying those motions establish a briefing schedule for the issues regarding the Staff EAS plan and the Companies' responses.

On September 6, 1994, a Recommended Decision was issued in Case No. 93-0223-T-C, which resolved the portion of that complaint proceeding involving the intrastate intraLATA dispute, wherein the Complainant had requested that the local calling area for the Fort Ashby exchange of Citizens be extended to include BA-WV's Ridgeley exchange. As a result of an agreement between the parties to these matters, Citizens had agreed to extend the local calling area for its Fort Ashby exchange customers, to include the BA-WV Ridgeley exchange effective January 1, 1995. Citizens was directed to make the appropriate tariff filing to accomplish that change no later than December 1, 1994.

On September 7, 1994, a Recommended Decision was issued in both of the above-styled and numbered proceedings, on the outstanding motions to dismiss filed by Citizens and BA-WV. In that Recommended Decision, the undersigned Administrative Law Judge denied the motions to dismiss filed on February 15, 1994, by Citizens and BA-WV, on the basis that, even though a state regulatory authority has no jurisdiction to modify LATA boundaries or to require local exchange companies to provide interstate service, it is nevertheless appropriate and consistent with federal requirements for state regulatory authorities to conduct proceedings to determine whether or not West Virginia communities whose local calling areas are affected by LATA boundaries have a sufficient community of interest with exchanges on the other side of those LATA boundaries to justify a request to the United States Department of Justice and United States District Court for the District of Columbia for waivers from or modifications of the existing LATA boundaries. Therefore, the Administrative Law Judge determined that the Public Service Commission of West Virginia had sufficient jurisdiction over the subject matter of these two complaint proceedings to at least hold hearings on the community of interest between the affected West Virginia communities on the one hand

---

(Footnote Continued)
Service Commission approved a joint petition for the purchase and acquisition of all of the telephone utility assets located in West Virginia of GTE South and Contel by Citizens. As a part of that acquisition and purchase, Citizens agreed to step into the shoes of GTE South and Contel with respect to certain matters pending before the Commission, including the subject matter of the instant complaints. Accordingly, no further reference will be made at this time to GTE South, other than slight references during testimony, and all references will be to Citizens.

and the out-of-state telephone exchanges on the other hand and to determine whether or not the Commission Staff proposal put forth in these cases was appropriate.

Accordingly, in that Recommended Decision, a hearing schedule was established for the purpose of conducting community of interest hearings in the West Virginia communities which are the subject of these proceedings, with a community of interest hearing being scheduled in Mason, West Virginia, on October 13, 1994, at 7:00 p.m., for the purpose of determining the community of interest between the BA-WV Mason exchange and the Citizens New Haven exchange, on the one hand, and the Pomeroy, Ohio, exchange of GTE North, on the other hand, and the cost to the two Defendants of establishing a service between those exchanges. A community of interest hearing was scheduled to be held in Frankfort, West Virginia, on October 18, 1994, at 7:00 p.m., for the purpose of taking testimony and evidence regarding the community of interest between the Citizens Fort Ashby exchange and the Cumberland, Maryland, exchange of Bell Atlantic-Maryland. and the cost of establishing service between those two exchanges. The Defendants were directed to file prepared testimony on their cost estimates for establishing the services requested in these proceedings on or before October 3, 1994. Commission Staff was given leave to file a prepared response to that testimony on or before October 11, 1994. Further, a briefing schedule was established with respect to the issues which were the subject of the March 21, 1994 hearing, i.e., he appropriateness of the Staff-proposed EAS plan submitted in these cases on August 9, 1993, and the objections of the Defendants thereto. Initial briefs on those issues were to be filed on or before September 27, 1994, with reply briefs to be filed on or before October 7, 1994.

On September 21, 1994, BA-WV, by counsel, filed a letter with the Commission indicating that BA-WV and Commission Staff had agreed that Bell Atlantic would, at least initially, seek an appropriate waiver from the United States Court for the District of Columbia in order to provide the intraLATA service requested in Case No. 92-1188-T-C (Mason/Pomeroy) under its "Winfield" plan. Thus, Bell Atlantic and Commission Staff were in agreement that briefs were no longer necessary on the Staff's proposed EAS plan, since the issue was now moot at least for the time being. Bell Atlantic's counsel represented that Staff counsel had authorized him to move that the briefing schedule set forth in the September 7, 1994 Recommended Decision on the Staff plan be vacated.

On September 22, 1994, Citizens filed provisional exceptions to the September 7, 1994 Recommended Decision on the motions to dismiss. Citizens stated that it would appear at the community of interest hearings scheduled for October 13 and 18, 1994, in Mason and Frankfort, West Virginia, respectively, but, pending any further relief being provided to the Complainants, Citizens indicated that it may wish to contest the Commission's jurisdiction to provide any such relief and, therefore, Citizens reserved that right in its provisional exceptions.

On October 13, 1994, the Commission acknowledged the receipt of the provisional exceptions filed by Citizens. The Commission expressed the opinion that these provisional exceptions were not exceptions as defined in West Virginia Code §24-1-9, but, instead, were a reservation of a

specific issue by a party. Therefore, the Commission remanded these matters to the Division of Administrative Law Judges for further proceedings on all outstanding issues.

None of the parties to these proceedings filed initial or reply briefs with respect to the issues which were the subject of the March 21, 1994 hearing, i.e., the appropriateness of the Staff-proposed EAS plan submitted in these cases on August 9, 1993, and the objections of the Defendants thereto.

Citizens and BA-WV both filed prepared direct testimony on the issues specified in the September 7, 1994 Recommended Decision on October 3, 1994. Commission Staff filed responsive testimony to the Defendants' prepared testimony on October 11, 1994.

On October 11, 1994, the undersigned Administrative Law Judge issued a Procedural Order in this case, changing the location of the community of interest hearing for Mason, West Virginia, from the Mason City Building to the Mason Senior Citizens' Center, due to the anticipated attendance for the Mason community of interest hearing.

The community of interest hearing scheduled to be held in Mason, West Virginia, on October 13, 1994, was held as scheduled, in the Senior Citizens' Center, Mason, West Virginia. Joseph J. Starsick, Jr., Esquire, appeared on behalf of BA-WV; John Philip Melick, Esquire, appeared on behalf of Citizens; and Steven Hamula, Esquire, of the Commission's Legal Division, appeared on behalf of Commission Staff. No specific appearances were entered on behalf of the Town of Mason. One hundred and five (105) individuals from the Communities of Mason and New Haven, West Virginia, and Pomeroy and Middleport, Ohio, signed the attendance sheet although many more attended the hearing. Forty-four (44) individuals made substantive statements on the record with respect to their calling habits and their need for local calling across the LATA boundary and state line between the two West Virginia communities on the one hand and the two Ohio communities on the other hand. Additionally, letters of support were filed by the County Commissions of Mason County, West Virginia, and Meigs County, Ohio; the Mason County Area Chamber of Commerce; Pleasant Valley Hospital; Peoples Bank; and Ohio Valley Supermarkets of Gallipolis, Ohio, in addition to letters and petitions from numerous individuals. Also, at the Mason hearing, the prefiled testimonies of BA-WV, Citizens and Commission Staff, submitted on October 3 and October 11, 1994, were received into evidence, although some of those exhibits are also pertinent to the Frankfort community of interest hearing.

The community of interest hearing scheduled for October 18, 1994, at Frankfort High School, near Short Gap, West Virginia, was held as scheduled, with John Philip Melick, Esquire, appearing on behalf of Citizens, and Steven Hamula, Esquire, appearing on behalf of Commission Staff. No appearance was entered by Bell Atlantic-West Virginia, Inc., since it is not involved in the Chaney complaint in Case No. 93-0223-T-C. Nile E. Chaney, the Complainant in Case No. 93-0223-T-C, appeared pro se. Additionally, approximately 290 individuals attended the Frankfort community of interest hearing, with 28 individuals making substantive

statements for the record. Letters of support were filed by the County Commission of Mineral County, West Virginia; the Mayor of Cumberland, Maryland; and the Mineral County Development Authority. At the conclusion of hearing on October 18, 1994, the matters involved in both community of interest hearings were submitted for decision pending the filing of the transcript and briefs.

On November 3, 1994, the undersigned Administrative Law Judge issued a Procedural Order in this case, providing the parties with notice of a briefing schedule for these cases, to the extent that the parties believed that any further briefs needed to be filed on any remaining issues, either jurisdictional or community of interest-oriented. The Administrative Law Judge permitted the parties to file initial briefs in these cases on or before November 21, 1994, with reply briefs to be filed on or before November 30, 1994.

On November 4, 1994, the transcripts for the two community of interest hearings held on October 13 and October 18, 1994, were filed at the Public Service Commission. The transcript for the Mason community of interest hearing consists of 83 pages, while the transcript for the Frankfort community of interest hearing consists of 106 pages.

On November 21, 1994, Commission Staff and Citizens Telecommunications Company of West Virginia, Inc., each filed Initial Briefs. Both parties also filed Reply Briefs on November 30, 1994. Since Bell Atlantic-West Virginia, Inc., agreed to make every effort to provide local calling between its Mason, West Virginia exchange and Pomeroy, Ohio, it did not file any briefs in Case No. 92-1188-T-C.

## PRELIMINARY MATTERS

Three hearings have been held in the cases which are the subject of this decision, a hearing on March 21, 1994, in Charleston, West Virginia, addressing specifically the merits of the Staff-proposed EAS plan filed in August of 1993, which actually generated the reopening and rehearing of these cases, and the community of interest hearings scheduled for the Mason and Frankfort areas. The March 21, 1994 transcript will be referred to as Transcript Volume I (Tr. Vol. I); the Mason community of interest transcript for the October 13, 1994 hearing will be referred to as Transcript Volume II (Tr. Vol. II); and the Frankfort community of interest transcript for the October 18, 1994 hearing will be referred to as Transcript Volume III (Tr. Vol. III). Further, at the March 21, 1994 hearing, BA-WV, Citizens and Commission Staff all introduced exhibits into evidence. When the community of interest hearings were held, specifically the Mason community of interest hearing, at which additional prepared testimony was submitted by all three parties, the same exhibit numbers were reused. Therefore, the Administrative Law Judge will redesignate the exhibits received into evidence at the Mason community of interest hearing to following the numbering for the exhibits established at the March 21, 1994 hearing. Therefore, the document designated as Citizens Exhibit No. 1 at the October 13, 1994 hearing will be redesignated as Citizens Exhibit No. 2; the documents received into evidence at the October 13 hearing as Bell Atlantic Exhibit Nos. 1 and 2 will be

redesignated as Bell Atlantic Exhibit Nos. 2 and 3; and the exhibit received into evidence at the October 13, 1994 hearing as Staff Exhibit No. 1 will be redesignated as Staff Exhibit No. 3.

## DISCUSSION OF THE ISSUES

The posture of these consolidated complaint cases has changed significantly since the first hearing held on March 21, 1994. From the filing of the Staff-proposed EAS plan in August of 1993, through the October 1994 community of interest hearings, Commission Staff has been arguing that the Public Service Commission has the authority to require the local exchange companies in West Virginia to take whatever steps are necessary to provide interstate or interLATA local calling between communities affected with a strong community of interest. That Commission Staff assertion of jurisdiction over interLATA or interstate local calling for the West Virginia Public Service Commission generated the most substantial disputes between the various parties to these proceedings. However, in its Initial Brief filed herein on November 21, 1994, Commission Staff reversed its position and acknowledged that the Commission does not have the authority to require a local exchange company to provide interstate extended area service. However, Commission Staff expressed the hope that the local exchange companies, particularly Citizens, after hearing the testimony of the customers in the Mason/New Haven and Fort Ashby areas, would voluntarily work with Commission Staff toward the provision of the interstate EAS which was requested in these proceedings.

The posture of Case No. 92-1188-T-C, the Mason proceeding, has also changed significantly as a result of a shift in the position of Bell Atlantic-West Virginia, Inc. At the hearing in Mason, through the testimony of its witness, Susan Lawson, which will be discussed subsequently, Bell-Atlantic informed the parties and the public that it had determined that there was a sufficient community of interest between the communities of Mason, West Virginia, and Pomeroy, Ohio, to justify the provision of local calling between those communities. Therefore, Bell Atlantic committed to constructing the facilities necessary to provide that service at its own cost. Thus, there appear to be no issues in dispute between Commission Staff and Bell Atlantic in Case No. 92-1188-T-C. However, based upon the Administrative Law Judge's reading of Judge Green's Order in United States of America v. GTE Corporation, Civil Action No. 93-1298, filed on December 17, 1993, which was received into evidence in these proceedings as Citizens Cross-Examination Exhibit No. 1, the fact that Bell Atlantic-West Virginia, Inc., has committed to attempt to provide interstate EAS between Mason, West Virginia, and Pomeroy, Ohio, in and of itself, would not be sufficient to obtain a waiver of the existing LATA boundary from Judge Green. As discussed in the September 7, 1994 Recommended Decision denying the motions to dismiss these proceedings, the state regulatory agency authorized to make community of interest determinations must find that a sufficient community of interest exists between the various exchanges at issue to warrant the provision of local service across LATA boundaries. Therefore, the Administrative Law Judge must still assess the testimony presented at the Mason community of interest hearing, and determine whether or not a

sufficient community of interest exists between Mason, West Virginia, and Pomeroy and Middleport, Ohio, to justify the seeking of a waiver of the LATA restrictions for those communities.

Since all parties to these proceedings are now in agreement that the Public Service Commission does not have the jurisdiction to require Bell Atlantic and Citizens to provide the interLATA EAS proposed by Staff in its August 9, 1993 plan, the Administrative Law Judge believes it is unnecessary to discuss that jurisdictional issue any further. Additionally, the Administrative Law Judge is of the opinion that the acknowledgement of lack of Commission jurisdiction by Commission Staff renders it inappropriate for the Administrative Law Judge to address the merits of the Staff plan or to adopt any portion of that Staff plan. Rather, based upon the legal arguments submitted to the Administrative Law Judge and her own reading of the Court Order in Citizens Cross-Examination Exhibit No. 1, the Administrative Law Judge is of the opinion that the only issue legitimately remaining to be discussed in these cases is whether or not a sufficient community of interest exists, between the affected West Virginia communities on the one hand and the out-of-state communities on the other hand, to justify the seeking of a waver of LATA restrictions by the affected telephone utilities and/or Commission Staff. Accordingly, the only determination which will be made by the Administrative Law Judge in this recommended decision is whether or not that community of interest exists between the affected exchanges.

Mason/New Haven Community of Interest

The community of interest hearing scheduled for Mason, West Virginia, technically was designed to obtain testimony and evidence on the community of interest between Mason and New Haven, West Virginia, with the community of Pomeroy, Ohio, on the other side of the Ohio River, which constitutes the border between Ohio and West Virginia in that area. In reality, however, the Mason community of interest hearing took extensive testimony not only from residents of Mason and New Haven, but also from residents of Pomeroy and Middleport, Ohio, verifying the interdependence and interrelationship of these four communities. The importance of this issue to the four river communities listed above was emphasized by the appearance and testimony of the Mayors of all four affected communities, Mayor Fred Taylor from the Town of Mason; Mayor Grayson Pat Williamson from New Haven; Mayor John Bletner of Pomeroy, Ohio; and Mayor Dewey Morton, the Village of Middleport, Ohio. (Tr. Vol. II, pp. 55, 58-59, 66-68, 74-77). In addition, not only did the hearing generate a large turnout of residents from the communities of Mason and New Haven, but it also generated a large turnout of residents from the communities of Pomeroy and Middleport, Ohio.

The testimony at the Mason community of interest hearing indicated that, while Mason, New Haven, Pomeroy, and Middleport are each individual communities, with their own local governments, the residents of these four communities consider them to be one large consolidated community. Most of the individuals who testified explained that they lived in one state and worked in the other, with the estimate being that as many as 50% of the people in the four communities live in one state and work in

the other state. (Tr. Vol. II, pp. 35, 36, 38, 40, 42-43, 44, 45, 48, 50-51, 52, 56, 61-62, 64, 69, 73, 79). All of the speakers had family and friends on both sides of the river in these communities and engaged several times per day in interstate calling of distances of five miles or less, because of their jobs, families, schools and friends, although, because of the cost, most of the speakers tried to limit either the number or duration of those calls to the extent possible. The consensus of all of the speakers was that their interstate calling volumes would substantially increase if local service was instituted between these four communities. (Tr. Vol. II, pp. 30, 33, 35, 38, 41, 43, 50, 51, 52, 53, 54, 55, 56, 58-59, 60, 61-62, 63, 64, 65, 69, 71, 74, 76, 77, 78, 79).

Representatives of numerous businesses from the area, including banks, supermarkets, furniture stores, pharmacies and other businesses in the four communities explained that they have significant numbers of customers on both sides of the river in all four communities and that all of the businesses in the four communities experience large telephone bills because of the amount of interstate calling that is necessary to run their businesses. (Tr. Vol. II, pp. 33, 34, 37, 38, 39-40, 41, 42, 43, 44, 45, 48, 54, 55, 56, 57, 60, 61, 62, 63, 64, 66-67, 69, 71, 72-73, 76, 77).

Several parents of school age children and teachers from both West Virginia and Ohio schools noted that it is quite common for parents of children attending school in one state to work in the other state, causing a significant monthly telephone expense for the Ohio and West Virginia kindergarten, elementary, junior high and senior high schools. Teachers and principals from schools from all four communities noted that it is not uncommon for the schools to have to contact parents directly for a variety of reasons, such as illness, absence, parent/teacher conferences and school events. All of the schools must accommodate these high telephone bills in their budgets due to the lack of local calling between these four communities. (Tr. Vol. II, pp. 42-43, 48, 50-56, 58, 65, 69, 70-71, 79, 80).

The testimony at the hearing also indicated that the hospitals and other medical facilities in the area, including doctors, dentists and pharmacies, routinely treat patients and have patrons from all four communities and experience the same sort of problems with high long distance calling expense, even though most of the residents of the area live within a ten-mile radius of each other. (Tr. Vol. II, pp. 30, 33, 35, 38, 43, 51, 58, 59, 60-61, 62, 63, 79). The area emergency medical services personnel routinely transport patients between the two states, to doctors, hospitals and clinics, and have a significant amount of telephone calling between these facilities and their base areas, to avoid tying up the ambulance radios with non-emergency communication, once the patient has been delivered to the destination, and to avoid revealing personal information over the radio, since many people in the area have police scanners and can monitor the EMS radio transmissions. (Tr. Vol. I, pp. 60, 67).

The fire departments in the four communities work closely in conjunction with each other, and have entered into mutual assistance pacts. It is not unusual for the fire departments to respond jointly to calls on

ooth sides of the river, provide backup assistance to each other or loan equipment between the various communities. Additionally, the four fire departments work together formulating regional emergency plans, and, as a result, experience significant long distance calling expenses. Further, the businesses that supply equipment to the fire departments are located, principally, on the Ohio side of the river, so the West Virginia fire departments experience frequent long distance calling expense for this reason as well. (Tr. Vol. II, pp. 32, 41, 46, 53, 55, 67, 68, 71, 76).

The local civic organizations for all four communities work closely together and coordinate and plan events with each other, and experience daily interstate calling. Several local civic organizations have residents of both Ohio and West Virginia on their boards, because of this close interrelationship. (Tr. Vol. II, pp. 69-70).

Economic development organizations from the four communities also work as one, treating the area as one consolidated economic development location, working together to bring business into any of the four communities. However, the economic development efforts of this area are being hampered by the existing LATA boundary, which divides the four communities. Additionally, the Mason/New Haven/Pomeroy/Middleport area is further hampered in its economic development efforts because of the existence of local calling across the LATA boundary and state boundary between Gallipolis, Ohio, and Pt. Pleasant, West Virginia, to the south, and Belpre, Ohio, and Parkersburg, West Virginia to the north. The lack f local calling between the Mason/New Haven/Pomeroy/Middleport communities has been a severe economic deterrent to new businesses entering the area, since businesses are more likely to go to the community to the south or the community to the north where local calling across the river is available. (Tr. Vol. II, pp. 40, 43, 45, 46-47, 53, 61, 62, 67, 73, 74-75).

The four local governments also work closely with each other, communicating about delinquent municipal service customers, i.e., water and sewer services, who may relocate from an Ohio community to a West Virginia community or vice versa, to avoid delinquent bills. Additionally, the local governments work closely together on general planning for the area, including emergency and economic development plans, and providing assistance during times of emergency to each other. (Tr. Vol. II, pp. 46-47, 55, 70, 75-76).

Indeed, the unusual characteristics of this interdependent area caused Bell Atlantic to halt its opposition to providing local calling across the Ohio River to Pomeroy, Ohio, from Mason, West Virginia, after it conducted a survey of its Mason exchange customers to determine their community of interest with Pomeroy, Ohio. Bell Atlantic mailed a customer survey to every customer in its Mason exchange, 854 customers, and received responses from approximately 400, or 47%, which is one of the highest responses to one of these surveys that Bell Atlantic had ever een. (Tr. Vol. II, pp. 6-7; Bell Atlantic Ex. No. 3). The Mason xchange customers who responded to the survey indicated that they averaged 17.4 calls per month per customer to Pomeroy, Ohio, with the median number of calls being 10 per month per customer. The subject matter of these calls included medical calls, business calls, employment

matters, family and schools. Eighty-three percent (83%) of the respondents to the survey indicated that, if calling to Pomeroy was local calling, they would increase the number of calls they make per month. Additionally, the survey provided an opportunity for the respondents to list the various problems caused by the lack of local calling or the benefits they would receive from local calling to Pomeroy, Ohio, which mirrored the comments made during the hearing by the various witnesses. (Tr. Vol. II, pp. 7-10; Bell Atlantic Ex. No. 3).

As a result of the results of the community of interest survey conducted by it, Bell Atlantic explained at the Mason community of interest hearing that it would seek the necessary approvals to commence providing local calling from its Mason exchange to the Pomeroy, Ohio, exchange. Bell Atlantic will expend between $250,000 and $450,000 in order to implement local calling from Bell Atlantic's Mason exchange to Pomeroy, Ohio. (Tr. Vol. II, pp. 5-6; Bell Atlantic Ex. No. 2, pp. 1-2). The facilities required include a river crossing and additional central office equipment. (Bell Atlantic Ex. No. 2, p. 2).

Upon consideration of all of the above testimony, the Administrative Law Judge is of the opinion that a substantial community of interest exists between Bell Atlantic's Mason exchange and Citizens' New Haven exchange, on the one hand, and the communities of Pomeroy and Middleport, Ohio, on the other hand. Accordingly, the Administrative Law Judge believes that any efforts which the two Defendant telephone companies can undertake to establish local service from their West Virginia exchanges to Pomeroy and Middleport, Ohio, would be legitimate efforts to address a real calling need and would comply with the requirements established by the federal government for obtaining waivers or modifications of existing LATA boundaries. There can be no question from the testimony presented at the Mason community of interest hearing that the lack of local calling from Mason and New Haven, West Virginia, to Pomeroy and Middleport, Ohio, is causing significant difficulties for the West Virginia and Ohio residents in these four communities and is impeding the economic development of this area. The unusual way in which this area has developed, with this cross-river interdependence between businesses and families more than justifies the finding that a substantial community of interest exists between the two West Virginia towns and the two Ohio towns sufficient to justify obtaining a waiver, if possible, from the existing LATA boundary to provide local telephone service between these communities.

With respect to Citizens' New Haven exchange, the Administrative Law Judge will direct Citizens to cooperate with Commission Staff in obtaining the necessary calling data to enable it to formulate a cost estimate for establishing interstate EAS from New Haven, West Virginia, to Pomeroy and Middleport, Ohio. Since the parties have not specified all of the data that should be accumulated to make the necessary determinations, the Administrative Law Judge will simply order Citizens to obtain and provide the data to be specified by Commission Staff.

Fort Ashby Community of Interest

While the number of attendees at the Fort Ashby community of interest hearing significantly exceeded the attendance at the Mason community of interest hearing, unfortunately, a significant amount of testimony was presented by attendees at the Fort Ashby community of interest hearing which was not actually relevant to the specific issues involved in that proceeding. Further, a review of the testimony presented at the Fort Ashby community of interest hearing indicates that there is not the interdependence between the Maryland telephone exchanges and the West Virginia telephone exchanges as was exhibited during the Mason community of interest hearing regarding the affected Ohio and West Virginia communities.

However, the testimony presented at the Fort Ashby community of interest hearing did indicate that the Cumberland, Maryland, area is the emergency, employment, economic, business and cultural center for the northern Mineral County, West Virginia, area, including the Fort Ashby exchange which is the subject of this proceeding. (Tr. Vol. III, pp. 8, 15, 23, 37, 56, 62, 73-74, 90). The Fort Ashby exchange is only eight miles from Cumberland, Maryland. (Tr. Vol. III, pp. 12-13). Approximately 25% of the entire Mineral County population is employed in Allegheny County (the county in which Cumberland is located), with approximately 35% to 40% of the Fort Ashby area residents working in Cumberland. Tr. Vol. III, pp. 8, 12, 18, 42, 47, 64). Many Fort Ashby exchange residents, as a result, frequently are required to make long distance telephone calls to reach their places of employment or, when at work, their childrens' schools in West Virginia. (Id.). Mineral County, West Virginia, is included in the Cumberland metropolitan statistical area for census and economic study purposes. (Tr. Vol. III, pp. 18-19, 40). It was noted that it is almost impossible to tell where the Fort Ashby area ends and the Cumberland area begins because the communities have grown together. (Tr. Vol. III, p. 37).

All of the businesses and schools in the Fort Ashby, West Virginia, exchange must communicate on a daily basis with businesses in the Cumberland, Maryland, exchanges to obtain supplies that they need and to deal with customers. As an example, the bank in the Fort Ashby exchange is a branch of a Cumberland bank and must communicate constantly across the LATA boundary with Cumberland, Maryland. All of the schools must deal with vendors in the Cumberland area because most of the supplies they require cannot be obtained in their local calling vicinity. Items such as building supplies and other high cost items must generally be purchased in the Cumberland area because they cannot be obtained locally. (Tr. Vol. III, pp. 25-26, 33-34, 35, 36, 38, 46-47, 49-50, 52-53, 56, 59-60, 61, 62, 71, 81, 90). Additionally, the various schools in the Fort Ashby exchange have to call into Cumberland several times per day in order to contact parents of school age children working in Allegheny County. (Tr. Vol. III, pp. 28-29, 33, 34, 56-57).

Fort Ashby, West Virginia, is one of the few areas remaining in the Mineral County/Allegheny County area which still has a significant amount of land available for development, for both residential and commercial purposes. Many businesses and individuals are interested in relocating

into the Fort Ashby area, but, once they find out about the limited local calling area and the fact that Cumberland is a long distance call, they choose to locate in other areas. Several public office holders from Mineral County emphasized that economic development in Mineral County, and the Fort Ashby area particularly, is being significantly hindered as a result of the configuration of the LATAs in the area and the inability to make a local call to Cumberland, Maryland. (Tr. Vol. III, pp. 10-11, 14-15, 16-17, 23-24, 25, 37-38, 40-41, 54, 60, 93-94). As an example of the expansion of the Cumberland, Maryland metropolitan area into Mineral County, West Virginia, it was pointed out that the City of Cumberland airport is located in Mineral County. (Tr. Vol. III, pp. 10-11).

Most of the residents of the Fort Ashby exchange, not to mention Mineral County, generally, obtain their principal medical care from hospitals, clinics and doctors in the Cumberland area. While there is a hospital in Keyser, West Virginia, according to the testimony presented at the hearing, it generally handles less complicated procedures. For any specialized services, for any obstetric care, care for premature babies and other such services, the residents in the Fort Ashby exchange are dependent upon Cumberland, Maryland. Approximately 95% of the Mineral County emergency ambulance calls go to Cumberland area hospitals, with the resulting long distance telephone calls between the ambulance bases and Cumberland for the same reasons as discussed during the Mason community of interest hearing. (Tr. Vol. III, pp. 17, 46, 57, 62-63, 67, 71, 74, 76-77, 81, 85-86, 87-88, 95).

Upon consideration of all of the above, the Administrative Law Judge is of the opinion that sufficient testimony was presented at the Fort Ashby community of interest hearing to demonstrate that there is a strong community of interest between the Fort Ashby exchange of Citizens Telecommunications Company of West Virginia, Inc., and the Cumberland exchanges, which community of interest is significant enough to justify seeking a waiver of the LATA boundary in the area to permit interstate EAS between the Fort Ashby exchange and the Cumberland exchanges. The high level of employment of residents in the Fort Ashby exchange in Allegheny County, Maryland, alone, would indicate a strong and significant community of interest between the two areas. When that knowledge is coupled with the emergency and medical reliance upon the Cumberland area by the Fort Ashby exchange, as well as the reliance on businesses in the Cumberland, Maryland, area to supply residents and commercial enterprises in the Fort Ashby exchange with the supplies and products that they need, the conclusion is inescapable that the Fort Ashby exchange in Mineral County has a strong community of interest with the Cumberland exchanges.

As with the problems with regard to the Citizens' New Haven exchange, no calling data has been accumulated to indicate the calling volumes from the Fort Ashby exchange to the Cumberland exchanges, so that Citizens would be able to establish a cost estimate for providing the interstate EAS from Fort Ashby to Cumberland if a waiver of the LATA boundary is ultimately obtained from the United States District Court. Therefore, as with the determination on the New Haven exchange, the Administrative Law Judge will order Citizens to cooperate with Commission Staff in accumulating whatever data Commission Staff believes is necessary to review and make a final determination on providing interstate EAS